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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,928	02/17/2004	William B. Hutton	HUTT 2568	1901
7812	7590	06/05/2006	EXAMINER	
SMITH-HILL AND BEDELL, P.C. 16100 NW CORNELL ROAD, SUITE 220 BEAVERTON, OR 97006			SUERETH, SARAH ELIZABETH	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/780,928	HUTTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sarah Suereth	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 May 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 15-19 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Election/Restrictions***

1. Claims 15 and 16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse, in the reply filed on May 10, 2006, of Figure 3. The Examiner notes that claims 17-19 that Applicant indicated in his response are readable on the elected species of Figure 3, actually read on the non-elected species of Figure 6. Therefore, claims 17-19 are also withdrawn from consideration.

Claims 1-14 stand.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 3749

3. Claims 1-4, 6-11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al (6102028) in view of Traeger et al (4823684).

Schlosser discloses: A barbecue grill (10) comprising: a main housing (14), a cooking grate (20), a primary heat source (16) below the cooking grate for transmitting heat to food items located on the cooking grate (Figure 2), a secondary housing structure within the interior space (22), a secondary heat source (18) below the secondary housing for transmitting heat to the secondary housing (col. 2, lines 15-19), and a container (24) for receiving wood pellets, and being positioned for delivering wood pellets to the secondary housing structure (col. 4, lines 16-18).

Regarding claims 2 and 3, the hood is visible in Figure 3, along with a hinge on the right side.

Regarding claim 4, the primary heat source is a gas burner (16).

Regarding claim 8, Schlosser discloses a searing bar (18) between the cooking grate and the primary heat source for receiving drippings from food items on the cooking grate (col. 3, lines 24-26).

Schlosser et al, as discussed above, discloses the invention as claimed with the exception of the container being accessible from the exterior of the main housing, and an auger mechanism to drive the wood chips.

Traeger et al discloses a wood chip container (68) mounted to the exterior of the grill (Figure 2), with auger means (54) for transferring wood pellets from the container to the secondary housing (34).

Regarding claim 7, Traeger discloses an inlet opening (arrow next to numeral 66) for receiving wood pellets from the container (68), an outlet opening for discharging wood pellets from the secondary housing (32), an interior channel (52) acting as a path between the inlet opening and the outlet opening, and a vent above the interior channel in the top (at numeral 48), said vent for allowing the smoke from the wood pellets to escape from the secondary housing (illustrated by the arrows in Figure 2).

The limitations "in the side wall" are given little patentable weight, as the Traeger apparatus performs in the same manner as applicant's invention. Applicant has failed to show criticality for the positioning of the inlet and outlet. The courts have held that claims altering the position of elements, while not modifying the operation of the device, do not distinguish over the prior art (*In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) MPEP 2144.04).

Regarding claim 9, the front wall (92) acts as a baffle, dividing the interior space into two sections and preventing the transmission of smoke between said two sections (col. 1, lines 62-64).

Regarding claim 14, Traeger shows an electric motor (58) to rotate the auger (col. 3, lines 12-14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Schlosser et al apparatus with the Traeger et al wood chip container and auger mechanism in order to provide wood smoke without the need to constantly refill the wood chip container (Traeger et al, col. 2, lines 7-10).

Art Unit: 3749

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al in view of Traeger et al, and further in view of Middlestetter (2493989).

The Schlosser/Traeger combination discussed above does not include driving means consisting of a spring drive motor with a handle and a latch.

Middlestetter discloses a spring drive motor (col. 1, line 1), with a handle (162) for winding (col. 3, lines 67-71), and a latch mechanism (col. 3, line 51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Schlosser/Traeger apparatus by replacing the Traeger auger with the Middlestetter spring drive motor in order to provide an inexpensive drive mechanism (col. 1, lines 36,37).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser et al in view of Giebel et al (5719377).

Schlosser et al, as discussed above, discloses the invention as claimed with the exception of the primary heat source being an electric resistance heater. Schlosser discloses that any type of grill could be used with the invention (col. 3, lines 48-53).

Giebel discloses: A barbecue grill (col. 2, line 13) comprising: a main housing having an interior space, a cooking grate (10), a primary heat source (12) below the cooking grate for transmitting heat to food items located on the cooking grate (col. 5, lines 2,3), a secondary housing structure within the interior space (18), a secondary

Art Unit: 3749

heat source (16) below the secondary housing for transmitting heat to the secondary housing (col. 5, lines 2,3), and a container (18) for receiving wood pellets.

The primary heat source is an electrical resistance heater (Figure 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Schlosser apparatus by replacing the gas burner with the electrical resistance heater of Giebel in order to provide more accurate temperature control (col. 2, lines 40-42).

### ***Conclusion***

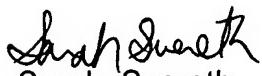
The prior art made of record on the attached form PTO-892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Suereth whose telephone number is (571) 272-9061. The examiner can normally be reached on Monday to Thursday 7:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Sarah Suereth  
Examiner  
Art Unit 3749



EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER